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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE J. OLIVARES,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 07-71939

Agency No. A073-894-094

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted January 13, 2009<sup>\*\*</sup>

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Jose J. Olivares, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings conducted *in absentia*. We have jurisdiction pursuant to 8

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Olivares' motion to reopen where the record establishes that Olivares was personally served with an Order to Show Cause and Notice of Hearing, written in both English and Spanish, and Olivares did not allege exceptional circumstances for missing his hearing. *See* 8 U.S.C. § 1252b(a)(2) (1995).

Olivares' contention that he is eligible for cancellation of removal is unpersuasive.

We lack jurisdiction to review Olivares' contention that he should also have received oral notice of his proceedings because he did not exhaust this claim before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (explaining that this court lacks jurisdiction to review contentions not raised before the agency).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**